



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

SMC
Docket No: 02550-98
12 January 2000

SGT [REDACTED] USMCR
[REDACTED]
[REDACTED]

Dear Sergeant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 12 January 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) in your case, dated 20 July 1998, and the advisory opinion from HQMC (MPE), dated 23 November 1998, copies of which are attached. The Board further considered the Center Inspector, Marine Corps Air Ground Combat Center 1610 32 memorandum dated 28 September 1998 forwarding the Hotline Completion Report IAR98010 dated 18 June 1998 with endorsement dated 31 July 1998.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB and the advisory opinion. The Board was unable to find the contested fitness report was in reprisal for your request mast raising an equal opportunity complaint. They noted the report dated 15 December 1997 of investigation regarding allegations of discrimination included an opinion questioning the validity of the contested fitness report; however, they further noted that the Commanding Officer, Headquarters Battalion frst endorsement dated 5 February 1998, paragraph 11c, disapproved that opinion "as it is not based on the findings of fact cited, or the content of any of the enclosures." In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, D.C. 20380-1775

2550-98

IN REPLY REFER TO:
1610
MMER/PERB
20 Jul 98

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
SERGEANT [REDACTED] USMC

Ref: (a) Sergea [REDACTED] DD Form 149 of 15 Mar 98
(b) MCO P1610.11B w/Ch 1-2
(c) NAVMC 2794 (User's Guide; How to Write a Fitness
Report)

1. Per MCO 1610.11B, the Performance Evaluation Review Board, with three members present, met on 16 July 1998 to consider Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 961024 to 970228 (AN) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report violates the guidelines contained in references (b) and (c) and that it is not an accurate reflection of his performance during the four months covered. To support his appeal, the petitioner provides his own statement and advocacy letters from Gunnery Sergeants [REDACTED] and Chapman and Staff Sergeants [REDACTED] and [REDACTED].

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. The Military Occupational Specialty (MOS) of 1345 is that of an Engineer Equipment Operator. It is, by design, a generic term that comprises the ability to operate several large pieces of equipment such as cranes and bulldozers. MOS 1345 also includes the ability to construct and repair military facilities; clearing and emplacing obstacles such as minefields; construction of bridges; emplacing and detonating explosives for demolition projects. Those additional duties normally attendant to a given billet within an organization, but which do not require prolonged periods of time, are to be considered a totality of duties assigned and, therefore, viewed as part of the regular duties. Duties that incorporate a large portion of a Marine's time which are considered outside of the primary MOS are to be reflected under "Additional Duties."

(3) PERB

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
 ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
 SERGEANT [REDACTED] USMC

b. Obviously [REDACTED] considered and appropriately incorporated all other duties under item 13b as "Additional Duties"-- marked "outstanding." The Section C comments accurately touched on the additional duties and projects under the petitioner's charge.

c. The Board is quick to point out that marks of "excellent" are not somehow unfair, simply because the petitioner (and others) believes he should have been graded higher. Notwithstanding the letters appended to reference (a), there is absolutely no documentary evidence to prove that the petitioner's performance was deserving of higher marks or more glowing comments.

d. Performance counseling, or a lack thereof, does not constitute grounds for removing a fitness report. Reference (b) governs a totally separate program from the Counseling Order. The two programs should be applied simultaneously; however, they are totally exclusive of each other. Performance counseling may be conducted in various forums employing a variety of techniques which may or may not be documented. Simply stated, the petitioner does not prove that he was not the recipient of "counseling" in some form.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Sergeant [REDACTED] official military record.

5. The case is forwarded for final action.

[REDACTED]
 [REDACTED]
 Chairperson, Performance
 Evaluation Review Board
 Personnel Management Division
 Manpower and Reserve Affairs
 Department
 By direction of the Commandant
 of the Marine Corps



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

2550-98

5354 REPLY REFER TO:
MPE
23 Nov 1998

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF SERGEANT [REDACTED]
[REDACTED]

Ref: (a) BCNR Package dtd 12 Nov 98

1. The reference has been reviewed, as requested, and the following opinion(s) are provided for consideration:

a. The reference was evaluated for racial discrimination based on the documents provided; however, the allegations are determined to be unsubstantiated.

b. Concur with the investigation finding that the situation between Sergeant [REDACTED] and Staff Sergeant [REDACTED] was the result of poor leadership rather than racial discrimination.

2. The point of contact in this matter is Master Gunnery Sergeant [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Colonel, U.S. Marine Corps
Head
Manpower Equal Opportunity Branch
Manpower Plans and Policy Division

(5) GPO ADVISORY OPINION